Advanced Installations, Inc. and Ventura County District Council of Carpenters. Cases 31-CA-8965, 31-CA-8972, 31-CA-9340, and 31-CA-9536

26 January 1984

SUPPLEMENTAL DECISION AND ORDER

By Chairman Dotson and Members ZIMMERMAN AND HUNTER

On 20 August 1981 the National Labor Relations Board issued a Decision and Order¹ in the aboveentitled proceeding in which the Board, inter alia, ordered the Respondent to make whole certain employees for any losses in pay and benefits that would have accrued to them but for the Respondent's unlawful changes and modifications in the contractual terms and to make whole certain employees for any loss of pay they may have suffered as a result of the Respondent's discrimination against them. On 12 November 1982 the United States Court of Appeals for the Ninth Circuit entered its Judgment enforcing the Board's Order. A controversy having arisen over the amount of backpay due under the Board's Order, as enforced by the court, the Acting Regional Director for Region 31 on 31 May 1983 issued a backpay specification and notice of hearing, alleging the amounts due to employees, the discriminatees, and various trust funds under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. The Respondent, by its attorney Robert F. Rubin, acknowledged receipt of the backpay specification and notice of hearing in a letter to the Regional Director dated 7 June 1983, but stated that it would not oppose the claims or file an answer.

Thereafter, on 25 July 1983, counsel for General Counsel filed directly with the Board a Motion for Summary Judgment, with exhibits attached. Subsequently, on 29 July 1983, the Board issued an order transferring the proceedings to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent, by its attorney Robert F. Rubin, acknowledged receipt of the order transferring the proceedings to the Board and Notice to Show Cause in a letter to the Board's Executive Secretary dated 11 August 1983, but indicated that it would not oppose the claims or file an answer.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this proceeding, the Board makes the following

Ruling on the Motion for Summary Judgment

Section 102.54 of the Board's Rules and Regulations provides, in pertinent part, as follows:

- (a) . . . The respondent shall, within 15 days from the service of the specification, if any, file an answer thereto
- (c) . . . If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without notice to the respondent, find the specification to be true and enter such order as may be appropriate.

The backpay specification, issued and served on the Respondent on or about 31 May 1983, specifically states that the Respondent shall, within 15 days from the date of the specification, file with the Regional Director for Region 31 an answer to the specification and that, if the answer fails to deny the allegations of the specification in the manner required under the Board's Rules and Regulations and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and the Respondent shall be precluded from introducing any evidence controverting them. As the Respondent has not filed an answer to the specification, has not offered an adequate explanation for its failure to do so, and has also failed to file a response to the Notice to Show Cause, the allegations of the specification and of the Motion for Summary Judgment stand uncontroverted. Therefore, in accordance with the rules set forth above, the allegations of the specification are deemed to be admitted as true and are so found by the Board without the taking of evidence in support of said allegations.

Accordingly, the Board concludes that the net backpay due to the employees and the discriminatees and the payments due to various trust funds are as alleged in the specification, and orders the payment thereof by the Respondent to the employees, discriminatees, and various trust funds.²

¹ 257 NLRB 845.

² The specification alleges an amount due the Carpenter Industry Advancement Fund of Southern California. The cessation of payments into such funds does not violate Sec. 8(a)(5) of the Act and a Board order requiring payments into such funds is improper. See *Urban Excavating Co.*, 264 NLRB No. 41 (1982), and Fox Painting Co., 263 NLRB 437 (1982), and cases cited therein. Accordingly, we have not included a payment to that fund in our Order.

Additionally, as noted below, our Order reflects the correction of certain computational errors in the backpay specification.

ORDER

The National Labor Relations Board orders that the Respondent, Advanced Installations, Inc., Ventura, California, its officers, agents, successors, and assigns, shall

1. Make whole the employees and discriminatees named below by payment to them of the amounts following their names, plus interest thereon to be computed in the manner described in Florida Steel Corp., 231 NLRB 651 (1977),3 until payment of all backpay due is made, less tax withholdings required by Federal and state laws:

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Ramond Bailey	\$ 2,701.21
Dennis Baker	41,132.92
Eric Beck	⁵ 25,144.16
Keith Beck	34.48
Steve Bruton	2,325.60
Todd Bublitz	209.52
Robert Burlingame	17.24
Luis Calderon	433.89
Paul Campos	115.88
Mike Cherney	98.64
Jim Crosswhite	70.07
Craig Cumberland	58.18
Patrick Donlan	3,842.22
Clyde Dudley	61,221.06
Alfred Estralla	58.18
John Frazier	7,807.42
Dave Gallant	98.64
Phil Garcia	48.16
James D. Gibson	⁷ 2,625.31
Brian Grigsby	98.64
Leonard Guidi	803.56
Billy G. Holladay	27.75
David Thompson	4,094.08
Robert Hudson	34.48
Emory Killian	50.28
David Kipp	272.62

³ See generally Isis Plumbing Co., 138 NLRB 716 (1962).

Robert F. Liening, Jr.	14,912.11
Stephen Lindberg	99.13
Pat Mergen	579.98
David Mills	⁸ 1,219.28
Daryl Musser	238.50
Myron Nicholson	928.02
Kim W. Nix	84.05
Mark O'Leary	16,776.33
Mel Oliver	129.47
Frank Orona	46.30
Frank Pagano	5,700.15
Mark Pagano	5,485.09
Frank Parks	112.06
Larry Quintal	12.93
Reggie Reel	263.68
Joe Rodriquez	976.90
Gary Simmons	77.58
Darwin Skelly	3,531.88
Sam Smalley	147.96
Dave Spoll	64.82
Howard Stachey	166.50
Ken Stevens	29.62
Pat Stransky	1,117.92
Mike Tuel	867.33
Tom Voeltner	98.64
Donald Webb	380.34
Paul Wood	¹⁰ 1,049.46
Earl Wyatt	43.99
Carlos Lopez	17.24

2. Make its employees whole by paying to the trust funds listed below the amounts following their names:11

for Southern California	\$19,628.38
Carpenters Health and Welfare	
Trust for Southern	
California	¹² 11,385.51

¹¹ Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. We leave to the compliance stage the question of whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our "make-whole" remedy. These additional amounts may be determined, depending upon the circumstances of each case, by reference to provisions in the documents governing the funds at issue and, where there are no governing provisions, to evidence of any loss directly attributable to the unlawfully withholding action, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. Merryweather Optical Co., 240 NLRB 1213 (1979).

⁴ The specification figure of \$1,165.80 has been changed to correct an error in calculating gross travel stock hours for the second quarter of

⁵ The backpay totals from Appendices A and B have been added together to arrive at this figure. The backpay total from Appendix B has been changed from \$22,348.34 to \$22,348.79 to correct an error in calculating calendar quarter gross backpay for the fourth quarter of 1979.

⁶ The specification figure of \$1,250.40 has been changed to correct an error in calculating gross travel stock hours for the third quarter of 1980.

⁷ The specification figure of \$2,742.41 has been changed to correct an error in calculating gross travel stock hours for the fourth quarter of

⁸ The specification figure of \$1,295.56 has been changed to correct an error in calculating net backpay per quarter for the first quarter of 1979 and in calculating the gross travel stock hours for the second quarter of

⁹ The specification figure of \$23.71 has been changed to correct an error in calculating net travel stock hours for the second quarter of 1979.

¹⁰ The backpay totals from Appendices A and B have been added together to arrive at this figure. The backpay total from Appendix A has been changed from \$243.26 to \$259.14 to correct an error in calculating net travel stock hours for the third quarter of 1979.

¹² The specification figure of \$11,380.62 has been changed to correct an error in calculating health and welfare payments for the second quarter of 1982.

Carpenter Joint Apprenticeship and for Southern California Training Committee fund

603.91